

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper	)	DOCKET TV-091641
Carrier Classification of and Complaint	)	and
for Penalties against:	)	DOCKET TV-090408 (<i>consolidated</i>)
)	
ACTIVE MOVING COMPANY, INC.,	)	ORDER 03
d/b/a ACTION MOVING CO., INC.)	
	)	INITIAL ORDER ENTERING
	)	DEFAULT JUDGMENT; DENYING
.....	)	REQUEST FOR LEAVE TO
	)	WITHDRAW APPLICATION;
In Re Application of	)	DENYING APPLICATION
	)	WITHOUT PREJUDICE;
ACTIVE MOVING COMPANY, INC.	)	CLASSIFYING ACTIVITIES AS
	)	JURISDICTIONAL; REQUIRING
for a permit to operate as a motor	)	RESPONDENT TO CEASE AND
carrier of household goods	)	DESIST FROM JURISDICTIONAL
	)	ACTIVITIES; ASSESSING
	)	PENALTIES FOR CONDUCTING
	)	JURISDICTIONAL ACTIVITIES
	)	WITHOUT AUTHORITY
.....)	

1 **Synopsis:** *This is an Administrative Law Judge's Initial Order that is not effective unless approved by the Washington Utilities and Transportation Commission (Commission) or allowed to become effective pursuant to the notice at the end of this Order. This Order, based on uncontested evidence, determines that Active Moving Company, Inc. d/b/a Action Moving Co., Inc. (Active Moving) is engaged in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and 81.80.075. Active Moving is required to cease and desist from engaging in such business. The evidence shows Active Moving violated a Consent Decree entered in the Superior Court of Washington for King County, the terms of which enjoin Active Moving from engaging in the activities shown by the record to have occurred. The Consent Decree provides that violating its injunction constitutes grounds for the Commission to deny Active Moving's pending application for authority, as to which this Order would deny withdrawal by the applicant. This*

Order finds two distinct violations of RCW 81.80.075, supporting a penalty assessment of \$5,000 for each violation, or \$10,000 in total.

SUMMARY

- 2 **NATURE OF PROCEEDINGS.** On March 16, 2009, in Docket TV-090408, Thomas Shanks filed an application for a permit to operate as a motor carrier of household goods within the state of Washington. His application came approximately nine months after the Commission received evidence that Mr. Shanks was illegally conducting business moving household goods in Washington and commenced action against him to enforce an earlier cease and desist order. After filing his application, Mr. Shanks filed a name change with the Washington Secretary of State's Office to change the name "Action Moving Company, Inc." to "Active Moving Company, Inc." In this Order, the Commission refers to the company as "Active Moving."
- 3 On July 10, 2009, Active Moving notified the Commission, in Docket TV-090408, that it did not wish to proceed with the application and requested that it be withdrawn and the proceeding dismissed. The Commission set this request for hearing.
- 4 On October 20, 2009, in Docket TV-091641, the Commission instituted a special proceeding on its own motion, pursuant to RCW 81.04.510, to determine whether Active Moving is engaging in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075. Docket TV-091641 also brings forward the Commission's Complaint against Active Moving, seeking to impose penalties for two violations of RCW 81.80.075. The Commission gave notice on October 20, 2009, that it would hear Active Moving's request in Docket TV-090408 on November 20, 2009, at 9:30 a.m., and simultaneously conduct the Commission's special complaint proceeding in Docket TV-091641. Inasmuch as the two matters involve related principles of law and overlapping authority, they were formally consolidated for hearing and determination pursuant to WAC 480-07-320.
- 5 **APPEARANCES.** Jennifer Cameron-Rulkowski, Assistant Attorney General, Olympia, Washington, appeared for the Commission's Regulatory Staff.¹ No one appeared at hearing for Active Moving.

¹ In formal proceedings, such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the

- 6 **HEARING/MOTION FOR DEFAULT JUDGMENT:** On November 20, 2009, the Commission conducted a duly noticed hearing in these consolidated dockets. The Commission's Notice, issued on October 20, 2009, along with Order 01 entered on that date, informed parties that failure to attend or participate in the hearing, or any other stage of the proceeding, constitutes grounds for entry of a default judgment, in accordance with RCW 34.05.440 and WAC 480-07-450. Considering that no one appeared for Active Moving at hearing, either in person or via the Commission's teleconference bridge line, Staff orally made its Motion for Default Judgment.
- 7 **DETERMINATIONS:** The Commission grants Staff's Motion for Default Judgment and finds on the basis of uncontested evidence that Active Moving is, and has been for a considerable period of time, engaging in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075. The Commission concludes it is appropriate to order Active Moving to cease and desist from this activity pursuant to RCW 81.04.510.
- 8 In addition to violating the statutes cited above, the company's activities violate an existing injunction set forth in a Consent Decree entered by the Superior Court of King County. Violation of the Consent Decree, by its terms, provides a basis for denial of Active Moving's pending application for authority. Thus, the Commission determines that it should deny Active Moving's request for leave to withdraw its application and, instead, deny the application. At Staff's suggestion, this denial is without prejudice to Active Moving reapplying in the future for authority to conduct jurisdictional activities.
- 9 Finally, the Commission determines that Active Moving should be penalized in the amount of \$5,000 for two violations of RCW 81.80.075, one for offering jurisdictional services and one for advertising without required authority, for a total penalty of \$10,000. Active Moving is required to pay this penalty within ten days following the date on which this Initial Order becomes final and no longer subject to Commission or judicial review.

presiding administrative law judge, and the commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See RCW 34.05.455.*

MEMORANDUM

I. Background

- 10 On more than one occasion, beginning sometime before January 2000, the Commission gained information that caused it to believe and therefore allege that Thomas Shanks, doing business under various corporate and trade names including “Action Moving Company, Inc.” and “Active Moving Company, Inc.,” was advertising, soliciting, offering, or entering into an agreement or agreements to transport household goods within the state of Washington without first having obtained a household goods carrier permit from the Commission, as it was required by law to do.
- 11 The Commission issued a cease and desist order and a penalty against Mr. Shanks d/b/a Action Moving Company, Inc., on January 24, 2000, in Penalty Assessment No. 99765, for transporting household goods within the state of Washington for compensation without a Commission permit.
- 12 In June of 2008, the Commission received evidence that Active Moving had conducted a recent residential move in Seattle. With this evidence, the Commission filed a petition in King County Superior Court to enforce the cease and desist order entered against Mr. Shanks in 2000.² Mr. Shanks paid his outstanding penalty to the Commission on February 13, 2009, and filed an application with the Commission for a permit to transport household goods on March 16, 2009.³
- 13 The Commission and Mr. Shanks agreed to settle the court case and jointly filed a Consent Decree that was entered in King County Superior Court on April 4, 2009. The Consent Decree expressly enjoins Active Moving and Thomas Shanks from

² King County Superior Court Cause No. 09-2-07007-5 KNT, *Washington Utilities & Transportation Commission v. Thomas Shanks, Action Moving Company, Inc.*

³ On his household goods permit application, Mr. Shanks selected the name, “Tom’s Action Moving Co., Inc.” Subsequently, Mr. Shanks selected a different name because the applicant name was similar to the name of a carrier already holding a household goods permit issued by the Commission. The name he selected was “Active Moving Co., Inc.” On April 30, 2009, Mr. Shanks officially changed the corporate name of “Action Moving Company, Inc.” to “Active Moving Co., Inc.”

transporting or holding themselves out to transport household goods without a Commission permit.⁴

- 14 On July 10, 2009, the Commission received an e-mail from Mr. Shanks, requesting leave to withdraw Active Moving's household goods permit application. In his e-mail message, Mr. Shanks stated:

Do [sic] to the economy and very slow business we find it difficult to try and run a moving business with trucks in the [S]eattle area. In fact we are trying to sell our trucks. The operating costs for fuel, insurance and maintenance is [sic] not helping our situation. We are still offering a load and unload service to the public and repeat customers with out [sic] the use of our trucks and if the customer rents there [sic] own truck. [O]ur website states this clearly that we offer a loading and unloading service (only). [Y]ou can see the information at www.actionmovingcompany.com. I thank you for your time on all of this, however the business is not good right now and to pursue further only to fail in the moving business would make no sense at this time. I would like to possibly pursue a moving permit in the future should the reality [sic] market and moving business should [sic] return back to normal.

- 15 Despite Mr. Shanks' representations in his email of July 10 that "our website states ... clearly that we offer a loading and unloading service (only)," Active Moving is advertising household goods moving services at www.actionmovingcompany.com. Text on the Web site describing the company's services, such as "Your Quality

⁴ The consent decree provides as follows at section 3.1:

Defendants and all successors, assigns, and transferees are hereby enjoined and permanently restrained in the state of Washington from directly or indirectly engaging in any of the following conduct:

- a. Holding themselves out to provide, contracting for, undertaking to provide, or providing intrastate transportation of property, including household goods, for compensation over the highways of the state of Washington without the required authority from the Washington Utilities and Transportation Commission to provide such transportation services.
- b. Advertising, in any medium, for the undertaking of intrastate transportation of household goods without the required authority from the Washington Utilities and Transportation Commission to provide such transportation services.

Seattle Mover Load & Unload Services” can be read as offering full-service moving service. In addition, the Web site continues to show a photo of a truck painted with the company’s name; and such an image implies that Active Moving transports household goods in this truck. On August 31, 2009, Commission Staff telephoned Active Moving and experienced no trouble making arrangements for a move of household goods from North Seattle to Renton.

II. Procedural History and Applicable Authority

- 16 By holding the company out to provide in-state moving services, Mr. Shanks and Active Moving have violated the Consent Decree that Mr. Shanks signed. According to the terms of the Consent Decree, such a violation may be a “basis for further enforcement proceedings, including, but not limited to contempt of court proceedings.”⁵ Moreover, the Consent Decree provides that “[v]iolation of any of the terms of the injunction . . . constitutes grounds for the Commission to deny [Active Moving’s] application for authority to transport household goods within the state of Washington for compensation or for the Commission to cancel such authority.”
- 17 Under RCW 81.80, the definition of “household goods carrier” includes a person who “advertises, solicits, offers, or enters into an agreement to transport household goods” within the state of Washington. The term “person” can mean a firm as well as an individual. Household goods carriers are common carriers. For the purposes of Title 81 RCW, every common carrier is a public service company. The Commission has jurisdiction to institute a special proceeding to determine whether a company or individual is conducting business as an intrastate mover of household goods requiring operating authority from the Commission, or has performed or is performing any act requiring Commission approval without securing such approval pursuant to RCW 80.01.040, RCW 81.80.070 and RCW 81.04.510. The Commission is authorized to file a complaint on its own motion setting forth any act of omission by any public service company that violates any law or any order or rule of the Commission.
- 18 It is illegal to engage in business as a household goods carrier within the state of Washington without first obtaining a household goods carrier permit from the Commission. Any person who engages in such business without the required permit

⁵ King County Superior Court Cause No. 09-2-07007-5 KNT, *Washington Utilities & Transportation Commission v. Thomas Shanks, Action Moving Company, Inc.*, Consent Decree at section 6.2.

is subject to a penalty of up to five thousand dollars per violation. If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.

19 When deciding the amount of the penalty to be ordered for engaging in business as a household goods carrier without a household goods carrier permit, the Commission must consider (1) the carrier's willingness to comply with the requirements of RCW 81.80.070 and the Commission's household goods carrier rules; and (2) the carrier's history of compliance with the provisions of RCW 81.80.075.

20 In their current procedural posture, these dockets require the Commission to make several determinations. In particular:

- The Commission must decide whether Active Moving is engaged in business as a household goods carrier in the state of Washington without the required permit.
- The Commission must decide whether to grant Active Moving's request for leave to withdraw its pending application for authority to conduct business as a household goods mover in the state of Washington.
- If it denies Active Moving's request for leave to withdraw, the Commission must decide whether to grant or deny the company's application for authority.
- If it determines Active Moving has engaged in jurisdictional activities without legal authority, the Commission must determine whether to order the company again to cease and desist from such activities, whether to assess penalties against the company and, if so, in what amount.

III. Discussion and Determinations

21 In a special proceeding instituted under RCW 81.04.510, the person against whom the allegations of illegal activity are asserted bears the burden of proving that its operations are not subject to the provisions of Title 81 RCW. In this proceeding Active Moving did not appear at hearing and made no effort to carry its burden. Although not a necessary condition to granting Staff's motion for default judgment—failure to appear being sufficient in itself to support such a decision—Active

Moving's failure to appear and carry its burden supports that decision and provides an independent basis upon which to determine that Active Moving has engaged in business as a household goods carrier in the state of Washington without the required permit. Indeed, the evidence, including his application for authority, shows that Mr. Shanks has illegally conducted business as a household goods mover in Washington over the course of many years.⁶

- 22 The Commission's determination that Active Moving has illegally engaged in business as a household goods carrier as recently as November 2009, in turn, establishes that the company violated the Consent Decree entered in the Superior Court for King County, acknowledging previous violations of Title 81 RCW. Violation of the Consent Decree establishes grounds upon which to deny Active Moving's pending application for authority from the Commission to conduct lawfully the activities it has illegally undertaken for some time. Therefore, it would not be appropriate for the Commission to simply allow Active Moving to withdraw its application. Instead, the Commission determines it should deny Active Moving's request for leave to withdraw its application and deny the application itself.
- 23 Although Active Moving violated the Commission's cease and desist order that was part of the penalty assessment proceeding in 2000, and the Consent Decree entered into earlier this year, the Commission determines it should again order the company and its owner to cease and desist from conducting business as a household goods mover in the state of Washington, pursuant to RCW 81.04.510. In addition to emphasizing in this manner the Commission's determination that Active Moving either conduct its business in accordance with the law or not at all, the Commission determines further that it should penalize the company for its unlawful activities. Staff has brought forth evidence of two violations of RCW 81.80, each of which carries a potential penalty of up to \$5,000. Considering Active Moving's long history of non-compliance and its apparent failure to take seriously its obligations under the law, the Commission determines it should assess the maximum penalties supported by the evidence presented. The Commission notes that assessment of total penalties of \$10,000 in these proceedings does not mean the company may not be subject to additional penalty assessments if the Staff finds and brings forward evidence of

⁶ Mr. Shanks's application states: "my first professionally paid public move was in 1980, I am going on my 29th yr involved in the moving industry." At least at the time of his application, and also during 1999 and 2000 when the Commission ordered him in Penalty Assessment No. 99765 to cease and desist from such illegal activity, Mr. Shanks or his company owned and used trucks to move household goods.

additional violations, whether current and ongoing, or in connection with previous activities by Active Moving.

FINDINGS OF FACT

- 24 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington, authorized by state law to regulate the rates, services, facilities, and practices of public service companies, including household goods carriers, under the provisions of Title 81 RCW.
- 25 (2) Respondent, Active Moving Company, Inc. d/b/a Action Moving, Co., Inc. is a corporation doing business in the state of Washington. Active Moving engages in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075.
- 26 (3) On August 31, 2009, Commission Staff telephoned Active Moving and experienced no trouble making arrangements for a move of household goods from North Seattle to Renton.
- 27 (4) Active Moving advertised household goods moving services at www.actionmovingcompany.com as recently as November 13, 2009.
- 28 (5) Active Moving and its owner, Thomas Shanks, have a long history of noncompliance with statutes and rules governing movers of household goods in the state of Washington, dating at least to 1999 and continuing at least as recently as November 2009.

CONCLUSIONS OF LAW

- 29 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of, and parties to, these proceedings.
- 30 (2) Active Moving is engaged in business as a household goods carrier within the state of Washington without the authority required by RCW 81.80.070 and RCW 81.80.075.

- 31 (3) Active Moving should be ordered pursuant to RCW 80.04.510 to cease and
desist from engaging in business as a household goods carrier within the state
of Washington without the authority required by RCW 81.80.070 and RCW
81.80.075.
- 32 (4) Active Moving's advertisement of itself on the company's Internet web pages
on November 13, 2009, as providing household goods moving services
constitutes one violation of RCW 81.80.075. The Commission should assess
the maximum penalty for this violation, \$5,000.
- 33 (5) Active Moving's offer on August 31, 2009, to transport household goods for
compensation from North Seattle, Washington, to Renton, Washington
constitutes one violation of RCW 81.80.075. The Commission should assess
the maximum penalty for this violation, \$5,000.
- 34 (6) Active Moving's violations of RCW 81.80.075 also violate the injunction set
forth in a Consent Decree to which the company and its owner, Thomas
Shanks, are subject pursuant to entry of an agreed order by the Superior Court
for King County on April 2, 2009. By the terms of the Consent Decree, this
violation "constitutes grounds for the Commission to deny defendant's
application for authority to transport household goods within the state of
Washington for compensation." The Commission accordingly should deny
Active Moving's request for leave to withdraw its application and, further,
should deny the application.

ORDER

THE COMMISSION ORDERS THAT:

- 35 (1) Commission Staff's Motion for Default Judgment is granted.
- 36 (2) Active Moving's request for leave to withdraw its pending application in
Docket TV-090408 for authority to engage in business as a household goods
carrier within the state of Washington is denied.
- 37 (3) Active Moving's application in Docket TV-090408 for authority to engage in
business as a household goods carrier within the state of Washington is denied,
without prejudice.

- 38 (4) Active Moving is required, pursuant to RCW 80.04.510, to cease and desist
from engaging in business as a household goods carrier within the state of
Washington without the authority required by RCW 81.80.070 and RCW
81.80.075.
- 39 (5) Active Moving must pay penalties in the total amount of \$10,000 for two
violations of RCW 81.80.075, each of which carries a maximum penalty of
\$5,000. The full penalty amount of \$10,000 must be paid to the Commission
no later than 5:00 p.m. on the tenth business day following the date on which
this Initial Order becomes final by operation of law, or following entry of the
Commission's Final Order after administrative review of this Initial Order.
- 40 (6) The Commission Secretary is given discretion to ensure compliance with the
requirements of this Order, including discretion to implement a payment plan
upon request made by Active Moving, prior to the date upon which the
assessed penalties become due.
- 41 (7) The Commission retains jurisdiction to enforce this Order.

DATED at Olympia, Washington, and effective November 24, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

NOTICE TO THE PARTIES

This is an Initial Order. The action proposed in this Initial order is not yet effective. If you disagree with this Initial Order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this Initial Order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this Initial Order to file a *Petition for Administrative Review*. What must be included in any Petition and other requirements for a Petition are stated in WAC 480-07-825(3). WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the Petition.

WAC 480-07-830 provides that before entry of a Final Order, any party may file a Petition to Reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. No Answer to a Petition to Reopen will be accepted for filing absent express notice by the Commission calling for such an answer.

RCW 80.01.060(3) provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion. You will be notified if this order becomes final.

In addition, WAC 480-07-450(2) provides that a party who is found in default may contest the order of default by filing a written motion with the Commission within ten days after service of the Final Order. A dismissed party or party found in default may request that the order be vacated and, if the order is dispositive of the proceeding, that the proceeding be reopened for further process.

One copy of any Petition or Answer filed must be served on each party of record with proof of service as required by WAC 480-07-150(8) and (9). An Original and (8) copies of any Petition or Answer must be filed by mail delivery to:

Attn: David Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250